



Department of Commerce

Division of Securities

Enforcement Section Update

Janice Hitzeman
Attorney Inspector
(614) 644-7373

Harvey McCleskey
Dep. Attorney Inspector
(614) 728-9394

OVERVIEW

R.C. 1707.36

Investigate and report upon all complaints and alleged violations of the Ohio Securities Act.

The Enforcement Section is a criminal justice agency.



STATUTORY AUTHORITY

- Administrative action
 - Suspend or revoke a license (R.C. 1707.19)
 - Cease and Desist (R.C. 1707.23)
 - Suspension of Reg. Offering (R.C. 1707.13)
- Civil action
 - Injunction/other equitable relief (R.C. 1707.26)
 - Restitution/Rescission (R.C. 1707.261)
- Criminal prosecution



CRIMINAL PENALTIES

Violations of the Ohio Securities Act are criminal felonies. R.C. 1707.99

< \$1,000	F5
\$1,000-\$7,499	F4
\$7,500-\$37,499	F3
\$37,500-\$149,999	F2
≥ \$150,000	F1



Enforcement Activity

- Complaints Received: 156 (up from 118)
- Open Investigations: 131
- New cases opened: 29

- 10 Attorneys
- 2 Investigators
- 3 support staff



Enforcement Activity

ADMINISTRATIVE CASES:

- 14 NOHs and 17 Final Orders (9 with Consent)
- 50 Respondents (Licensees: 11 Firms/6 Ind.)

ADMINISTRATIVE HEARINGS

- 2 Regular/2 *Goldman*

ADMINISTRATIVE APPEALS

- 1 (Timothy K. Fife Division Order No. 16-012)
Case No. CV-16-862093, Cuyahoga County



2016 Administrative Violations

- Unlicensed Firms and Individuals
 - Fraud, Misreps, Unlicensed, Unregistered
- Licensed Firms and Individuals
 - Suitability (ETFs, Non-traded REITS, complex products)
 - Compliance Issues (Failure to respond)
 - Supervisory Issues
 - Fraudulent, Manipulative and Deceptive Conduct



Enforcement Activity

CRIMINAL CASES:

- Criminal Indictments: 7 (72 counts)
- Criminal Bills: 1 (3 counts)
- Criminal Convictions: 4 (140 counts)
- Sentences: 16+ yrs prison; 9 yrs cc
- Restitution Ordered: \$5,861,732
- Voluntary Remediation: \$368,400



TOP 5 INVESTMENT SCAMS

- Scams Targeting Seniors
- Complex Products (Binary Options, ETFs, Prime Bank Schemes)
- Unregistered Activity/Unlicensed Sales
- Ponzi Schemes
- Oil and Gas Ventures (Boiler Room)



CASE UPDATES



Administrative Cases

In re: Lincoln Financial Advisors Corp.

Division Order No. 16-016 with Consent

In re: LPL Financial

Division Order No. 16-008 with Consent

- Non-Traded REITs
- Remediation Offers to Investors
- Violations:
 - Concentration Limits, Prospectus Guidelines, Supervisory Procedures



Administrative Cases (cont.)

License Revocations

- Timothy K. Fife
Administrative Hearing
Division Order No. 16-012
On Appeal
- Thomas Henry Roulston III/Thomas Roulston III
Investment Partners, Inc.
Consent
Division Order No. 16-013



UPCOMING ADMINISTRATIVE HEARINGS

- November 14-18
In re: Joseph Mersnick
Division Order No. 16-025
- December 6-7
In re: Thomas Gilmartin et al.
Division Order No. 16-021



State Criminal Cases

State v. Jon Horvath

Hamilton County
B 1307440

State v. Kautzmann

Warren County
15CR31465

State v. Carl Moss

Summit County
2016CR04133

State v. Bruce Durr

Delaware County
16CR11-07-0368



Federal Criminal Cases

U.S. v. Brenda Ashcraft

1:13-CR-00093

S.D. Ohio

U.S. v. Donna Brown

5:16-CR-00036

N.D. W. Virginia

U.S. v. Geoffrey Nehrenz

1:15-CR-00017

N.D. Ohio

U.S. v. Apostelos

3:15-CR-00148

S.D. Ohio



UPCOMING CRIMINAL MATTERS

- 10/21/16 Arraignment – State v. Bruce Durr
16CR11-07-0368 – Delaware County
- 11/4/16 Sentencing - State v. Frank Kautzmann
15CR31465-Warren County
- 11/28/16 Sentencing - State v. Jon Horvath
B1307440-Hamilton County
- Pending First District Ct of Appeals Decision
State v. Peter Beck C1500539



QUESTIONS?

Janice.Hitzeman@com.state.oh.us

(614) 644-7373 - direct

Harvey.Mccleskey@com.state.oh.us

(614) 728-9394 - direct





SECURITIES BULLETIN

JOHN KASICH
Governor

ANDRE PORTER
Director of Commerce

ANDREA SEIDT
Commissioner of Securities



**Department
Of Commerce**
Division of Securities

OHIO SECURITIES BULLETIN ISSUE 2015:2

Table of Contents

**Binary Options:
Buyer Beware** 1

The Process of a Complaint 3

Administrative Actions 4

Criminal Matters 5

A to Z with L & E..... 6

Ohio Securities Exchange 9

Editors-In-Chief
ANDREW HOWARD
KYLE EVANS

Layout & Design Editor
RAYMOND GLENN

Ohio Securities Bulletin Intern
CHRISTINE DURANEY

Ohio Department of Commerce
Communications Director
DAVID HOPCRAFT

OHIO DIVISION OF SECURITIES

INVESTOR PROTECTION HOTLINE

1-877-N-VEST-411

1-877-683-7841

TTY/TDD: 1-800-750-0750

<http://www.com.ohio.gov/secu>

BINARY OPTIONS: BUYER BEWARE

By Ohio Division of Securities Attorney Inspector, Janice Hitzeman

Binary option trading is becoming increasingly popular through website platforms that tout the ability to earn astronomical returns through short term trading strategies. A Google search of the term “binary options” yields a return of over 28 million results for websites offering such services as “How to trade **binary options** like a pro!” and “Earn Up to 95% in Only 1 Hour!” These types of sales tactics lure investors into setting up online accounts to engage in binary options trading without proper disclosure of the risks involved, including the risk of fraudulent activity by unscrupulous internet platforms that are not registered or licensed to conduct these types of trades on behalf of investors.

Binary options differ from more conventional options in significant ways. A binary option is a type of options contract in which the return is based entirely on the outcome of a yes/no proposition. The yes/no proposition typically relates to whether the price of a particular asset that underlies the binary option will rise above or fall below a specified amount.¹ For example, an investor might purchase an option that the price of an underlying stock will be greater than a set amount on a specified future date and time. When the binary option expires, the option holder will receive either a pre-determined return or will lose their entire investment.²

The Securities and Exchange Commission (“SEC”) filed a civil injunctive ac-

tion on June 5, 2013 in the United States District Court for the District of Nevada, charging a Cyprus-based company and related individuals with selling binary options illegally to U.S. investors.³ In granting the preliminary injunction, the court opined that binary options are wagering contracts that depend upon the value of securities, and, therefore, are securities as defined by The Securities Exchange Act of 1934.⁴ The court described binary options as follows:



Both parties to a binary option are well aware that the transaction includes no present, future, vested, or contingent interest in the stock itself. Binary option givers and buyers do not purport to trade interests in securities any more than tellers and gamblers at a racetrack purport to trade interests in horses. In those transactions, the securities and the horses, respectively, are neither part of the consideration for nor the subject matter of the contract, but rather the securities' and horses' respective performance is simply a remote condition precedent triggering the obligations of the parties.⁵

Some binary options internet-based trading platforms may overstate the average return on investment by providing only the returns received on options that expire

(Continued on page 2)

¹Investor Alert: Binary Options and Fraud, SECURITIES AND EXCHANGE COMMISSION OFFICE OF INVESTOR EDUCATION AND ADVOCACY, http://www.sec.gov/investor/alerts/ia_binary.pdf.

²*Id.*

³S.E.C. v. Banc de Binary, Ltd., 964 F. Supp. 2d 1229, 1231, (D. Nev. 2013); See also U.S. Commodity Futures Trading Comm'n v. Banc de Binary, Ltd., D. Nev. Case No. 2:13-cv-00992 (companion case filed the same day).

⁴Banc de Binary, Ltd., 964 F. Supp. 2d at 1231. (S.E.C. v. Banc de Binary, Ltd., D. Nev. Case No. 2:13-cv-00993 is still pending in the District Court for the District of Nevada. The SEC complaint requested additional relief including a permanent injunction, disgorgement and civil penalties. A trial date has not been scheduled as of the date of this article.)

⁵Banc de Binary, Ltd., 964 F. Supp. 2d at 1231.

(Continued from page 1)

“in the money,” a term used to describe an option that pays a return to the investor. In fact, binary options are high risk investments where the losses can include a total loss of the investment amount. Factoring in the losses would reduce the average return substantially, perhaps to a negative average return or net loss. These websites also promote their platforms by offering controlled risk, low cost, huge gains (if you guess right), and ease of use. Many platforms allow investors to set up their account with a credit card and trade from home whenever markets are open.

While some binary options are listed on registered exchanges or traded through designated contract markets, which are subject to oversight by the SEC or the U.S. Commodity Futures Trading Commission (“CFTC”), much of the binary options market operates through internet-based trading platforms that are not necessarily complying with applicable regulatory requirements. The number of Internet-based trading platforms that offer the opportunity to purchase and trade binary options has surged in recent years. The threat of fraudulent promotion schemes involving binary options trading platforms in Ohio is real and the Ohio Division of Securities (the “Division”) has seen an increase in the number of complaints involving these trading platforms.

The Division recently initiated administrative actions against two internet platforms engaged in selling binary options through the internet. In Division Order No. 14-024 issued on October 23, 2014, the Division found that Vault Options was operating an internet-based binary options trading platform that was acting as an unlicensed securities dealer in Ohio.⁶ The website, www.vaultoptions.com, is purportedly owned by a company located in England; but the website provides a principal business address for Vault Options as a vacant building in New York. A retired Ohio teacher was lured into investing \$50,000 on the platform by advertisements promising up to 500% returns on investment. In addition to the unlicensed activity, the Division Order found that Vault Options engaged in securities fraud and manipulative, deceptive or fraudulent conduct and ordered them to cease and desist from further violative conduct.⁷

In Order Number 15-004 issued on February 25, 2015, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue a Cease and Desist Order to Chelestra Limited d/b/a LBinary (“LBinary”), a company located in Gibraltar. LBinary operates the website

www.lbinary.com, which the Division alleges solicited the sale of securities and acted as an investment adviser by offering investment advice to clients who invested a certain amount on the platform.⁸ The Division further alleged that LBinary engaged in fraudulent, manipulative and deceptive conduct, in part, by advertising up to 720% profits.

In order to protect yourself or a client who is interested in engaging in binary options trading, the Division urges readers to conduct due diligence to insure that the platform is legitimate. Check to see if the binary options trading platform itself is registered as an exchange through the SEC website.⁹ Also check to see if the binary options trading platform is a designated contract market through the CFTC website. Finally, if the platform or its representatives are offering suggestions or advice about trades, or if the platform is charging a fee to conduct transactions, check to see if they are properly licensed through the database of the Central Registration Depository and Investment Advisor Registration Depository.

Save the Date!

Friday, October 2, 2015

2015 OHIO SECURITIES CONFERENCE

RENAISSANCE COLUMBUS

DOWNTOWN HOTEL

50 N. 3rd St.

Columbus OH 43215

Details & Registration Information

Coming Soon!

⁶State of Ohio Department of Commerce, Division of Securities, Division Order 14-024 *In re Vault Options*, https://www.comapps.ohio.gov/secu/secu_apps/FinalOrders/Files/2014/14-024%20Vault%20Options%20C&D.pdf.

⁷*Id.*

⁸State of Ohio Department of Commerce, Division of Securities, Division Order 15-004 *In re Chelestra Limited d/b/a LBinary*.

⁹U.S. SECURITIES AND EXCHANGE COMMISSION, www.sec.gov/divisions/marketreg/mrexchanges.shtml.

Complex Products and Schemes

BY: JANICE HITZEMAN — ATTORNEY INSPECTOR

A person intent on committing fraud has an infinite number of vehicles by which to perpetrate it. The Division continually encounters new and evolving schemes which lure investors into relinquishing hard-earned dollars to fraudulent and deceptive schemes that seem, at quick glance, plausible for investment. This article will explore complex investment products and schemes identified by the Division which have been used in Ohio as a conduit for fraudulent and manipulative conduct, including prime bank instruments and letters of credit, leveraged and inverse exchange-traded funds (“ETFs”), and natural resource and mining investments.

PRIME BANK INSTRUMENTS AND LETTERS OF CREDIT

Prime bank instruments, including letters of credit, are a contractual agreement between one bank (the issuing bank) on behalf of one of its customers, authorizing another bank (the advising or confirming bank) to make payment to the beneficiary. The issuing bank, on the request of its customer, opens the letter of credit, and by doing so commits to honor drawings made under the credit. The beneficiary in these situations is typically the provider of goods and/or services and the issuing bank essentially replaces the bank’s customer as the payor of the transaction. These prime bank instruments and letters of credit sometimes are solicited as a “get rich quick” scheme where investors are provided a copy of a forged or fraudulent letter of credit and told that if they invest in a relatively small percentage of the business being provided the loan, they will receive a significant return immediately through the proceeds of the loan. The issuing bank is generally located in a foreign country and the letter of credit or prime bank instrument is provided to the investor as evidence of collateral for the investment.

Tips for avoiding letter of credit fraud:

- ◇ If an “opportunity” appears too good to be true, it probably is.
- ◇ Do not invest in anything unless you understand the deal. Con artists rely on complex transactions and faulty logic to “explain” fraudulent investment schemes.
- ◇ Do not invest in or attempt to “purchase” a “letter of credit.” Such investments simply do not exist.
- ◇ Be wary of any investment that offers the promise of extremely high yields.
- ◇ Independently verify the terms of any investment that you intend to make, including the parties involved and the nature of the investment.

LEVERAGED AND INVERSE ETFs

The Division recently discussed ETFs and the risks associated with these investments in a previous publication of the Ohio Securities Bulletin.¹ The traditional index ETF is designed to deliver the returns of the index in

equal measure for a specified period. An inverse ETF is designed to earn the return of the index if it were sold short – that is, the negative of the index return or –1X the index return. If an ETF is leveraged, it is designed to earn more than the return of a simple long or inverse ETF. Currently, most leveraged ETFs are either 2X, 3X, --2X, or –3X, and therefore offer investors the opportunity to earn two or three times (and lose two or three times) the daily return of a simple long or short position in the index.² Research has established that investors who hold these products for periods longer than a day expose themselves to substantial risk as the holding period returns will deviate from the perceived returns of the originally purchased leveraged or inverse ETF of the index.³ It’s also possible for an investor in a leveraged ETF to experience negative returns even when the underlying index has positive gains. Based on research conducted by the Investment Company Institute, the total number of index-based and actively management ETFs, including commodity ETFs, domiciled in the

¹ D. Michael Quinn, *Exchange Traded Funds: Cousins to Mutual and Index Funds*, *Ohio Securities Bulletin*, Issue 2015:4, 5-6 (2015).

² Patricia Knain Little, *Inverse and Leveraged ETFs: Not Your Father’s ETF*, *The Journal of Index Investing*, Vol. 1, No. 1, 83-89 (2010).

³ See Ilan Guedj, Guohua Li & Craig McCann, *Leveraged ETFs, Holding Periods and Investment Shortfalls*, Securities Litigation and Consulting Group, Inc. (2010).

Complex Products and Schemes

(Continued from page 4)

United States has grown from 1,411 in 2014 to 1,609 as of March of 2016; additionally, the total net assets in these ETFs has grown from \$1.9 trillion to over \$2.1 trillion over the same period.⁴

The leveraging process is built to achieve an objective quite different from that of the simple, traditional ETF. Like the traditional ETFs, leveraged and inverse ETFs trade intraday, but they differ from traditional ETFs in terms of fees, expenses and tax efficiency. Fees and expenses are higher, often exceeding 1% per annum. Tax efficiency is lower because most trades settle in cash rather than in kind, and realized gains from the use of derivatives are generally taxed at ordinary income tax rates instead of the lower capital gains tax rates.⁵

Inverse and leveraged ETFs are complex products requiring adequate disclosure so that investors are well-informed of the nature of this type of investment, the elevated fee structure, unfavorable tax consequences, and risks. The Division recently issues two final Orders related to the recommendation and sale of inverse and leveraged ETFs. The first Division Order revoked the Ohio investment adviser license of an Ohio licensee based, in part, on recommending unsuitable investments in inverse and leveraged ETFs to his senior and elderly clients based on misrepresentations that the clients' investments were low-risk and fool-proof.⁶ The second Order was issued against an Ohio resident who wasn't licensed with the Division but engaged in the purchase and sale of securities in the accounts of six investors resulting in substantial losses.⁷ The respondent's website promised annual returns of 42% based upon trading in ETFs, including inverse and leveraged ETFs.

NATURAL RESOURCE AND MINING

The Division has recently seen an increase in complaints based on investments in natural resource and mineral mining. Many of these investments involve limited or general partnerships or fractionalized interests in mining or well leases, which offer significant returns based on the work of others to operate, maintain, mine or drill for the resources.⁸

While these investments may seem simple, the operation of the issuer and the offering materials are often complex and incomprehensible to unsophisticated investors. The sales tactics used in these types of transactions include assurances that the investment involves minimal risk, the wells in the area are known producers, the investment window is short, and that the offer is only being made to a select few investors. In many instances, the wells or mines are located in states geographically distant from where the investors reside, forcing them to rely on assurances made by nameless, faceless solicitors cold-calling them through boiler room operations. Ohio investors have recently been cold-called to solicit in oil and gas wells located in Nebraska,⁹ Texas, Kentucky,¹⁰ and Oklahoma.

Prior to investing or advising a client to invest in natural resource mining or well operations, confirm with the proper state or local authority that the well or mine exists. For example, the [Ohio Department of Natural Resources](#) maintains a database for oil and gas wells and mines which are located within the state. Similarly, the [Railroad Commission of Texas](#) maintains a database for oil and gas wells, which can even include production levels for specific wells. Investors can use sources like these to determine who owns the well or mine and who has been granted drilling or mining permits to operate

them. After confirming that the well or mine exists and that the proper permits have been issued, investors should also consider the following questions:¹¹

- ◇ Is the offering registered for sale in Ohio or subject to an applicable state or federal exemption from registration? Keep in mind that the federal exemption under [Rule 506 \(b\)](#) is not available if the offering involves general solicitation and the federal exemption under [Rule 506 \(c\)](#) is available for offerings sold only to verified accredited investors.
- ◇ Who will be responsible for payment of taxes? Will they be paid out of the investor's share?
- ◇ What is the location of available pipelines, or what method will be used to transport and sell any production?
- ◇ What are the name and address of the operator? What is her/his experience with ventures of this nature? What are the terms of the agreement with the operator, including the compensation terms?
- ◇ How will the decision be made for completing the well or abandoning it? Who will make that decision? What is to become of funds received from the salvage value of equipment on the lease?

CONCLUSION

Prime bank instruments and letters of credit, leveraged and inverse ETFs, and natural resource and mineral mining are just a sampling of the types of investments being sold to Ohio investors recently through fraudulent and deceptive practices. The instrumentalities of fraud are limited only by the imagination of those intent on siphoning the funds of others for their own purposes. As with all investments, Ohio residents should be wary of red flags and offers that seem too good to be true.

⁴ Exchange-Traded Funds March 2016 Release, Investment Company Institute (April 28, 2016); [Frequently Asked Questions About the U.S. ETF Market](#).

⁵ See Little, *supra*.

⁶ Final Order Revoking Ohio Investment Adviser Representative License of Timothy K. Fife, [Division Order No. 16-012](#) (2016). A Notice of Appeal for this Order has been filed as Case No. CV-16-862093 in the Cuyahoga County Court of Common Pleas.

⁷ Waldemar Kazana, Cease and Desist Order, [Division Order No. 16-009](#) (2016).

⁸ See generally [Oil and Gas Securities: A Primer](#), [Ohio Securities Bulletin, Issue 2012:1](#), 1-2 (2012).

⁹ Horizon Energy, LLC and Harrison Owens, Notice of Opportunity for Hearing, [Division Order No. 15-021](#) (2015); Termination Order, [Division Order No. 16-004](#) (2016).

¹⁰ Jewell Jackson Oil and Gas, LLC et al., Cease and Desist Order, [Division Order No. 14-016](#) (2014); Holland Turner, Cease and Desist Order, [Division Order No. 14-011](#) (2014).

¹¹ See North American Securities Administrators Association, [Oil & Gas Investment Fraud](#).



Department
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OHIO SECURITIES BULLETIN

ISSUE 2016:1

TABLE OF CONTENTS

[Pitfalls and Precautions of Self-Directed IRAs](#).....1,2,3

[Working Groups](#)2

[Registration FAQs](#).....4

[New Registration Attorneys](#)4

A TO Z WITH L&E

[The New Brochure Rules](#)5,6

Licensing Spotlight:

[Kelly Igoe](#).....7

[Q&A](#)7

[Licenses Issued](#)7

[NASAA Announces Exam](#)

[Fee Increase](#)7

ENFORCEMENT UPDATE

[Administrative Actions](#)8,10

[Criminal Cases](#)9,10

New Enforcement

[Attorneys](#)11

Editor-In-Chief

KYLE EVANS

Kyle.Evans@com.state.oh.us

Layout & Design Editor

RAYMOND GLENN

Ohio Department of Commerce

Communications Director

DAVID HOPCRAFT

OHIO DIVISION OF SECURITIES

INVESTOR PROTECTION HOTLINE

1-877-N-VEST-411

1-877-683-7841

TTY/TDD: 1-800-750-0750

SECURITIES BULLETIN

JOHN W. KASICH
Governor

JACQUELINE T. WILLIAMS
Director of Commerce

ANDREA SEIDT
Commissioner of Securities

PITFALLS AND PRECAUTIONS OF SELF-DIRECTED IRAS

By Janice Hitzeman - Attorney Inspector - Enforcement

A self-directed Individual Retirement Account (IRA) is a tax deferred investment account held by a trustee or custodian that permits the account beneficiary to invest in a wider array of investment vehicles than those normally afforded by IRA custodians. Custodians of self-directed IRAs may allow investors to invest in promissory notes, real estate, tax liens certificates and private placement offerings. However, these types of non-traditional investment products are subject to unique risks, including minimal disclosures, liquidity and fraud.

Entities engaged in the trust business in Ohio must comply with licensure requirements administered through the Ohio Division of Financial Institutions, in addition to complying with provisions of the Ohio Securities Act administered through the Ohio Division of Securities.¹ Prior to soliciting or engaging in trust business and at all times while engaging in trust business in Ohio, a trust company shall maintain sufficient capital and fidelity bonds required by Ohio law.² The trustee or custodian must be a bank, a federally-insured credit union, a savings and loan association, or an entity approved by the Internal Revenue Service (IRS) to act as trustee or custodian.³ Trustees and third party custodians that are not banks (nonbank custodians or NBTs) are subject to requirements set forth in [Treasury Regulation Section 1.408-2\(e\)](#). An entity seeking to act as a trustee or custodian for self-directed IRA accounts can request to be an NBT by applying to the IRS and demonstrating that certain requirements

will be met in the management of specified fiduciary accounts. The IRS maintains a [list of Nonbank Trustees](#) publicly available on the IRS website.

The Division has seen a rise in complaints involving fraud related to issuers and solicitors touting the advantages of investing through self-directed IRAs. While self-directed IRAs may provide some benefit to investing retirement funds, investors should be leery of potential fraudulent investment schemes when considering this retirement vehicle. In 2011, the U.S. Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) issued a joint alert warning investors of fraudulent schemes operated through the use of self-directed IRA programs.⁴ State securities regulators have investigated numerous cases where a self-directed IRA was used in an attempt to lend credibility to a fraudulent scheme. Similarly, the SEC has brought several cases in which promoters of fraudulent schemes steered investors to self-directed IRAs.⁵ The joint alert issued by the SEC and NASAA in 2011 urges investors to take the following steps to avoid fraud related investments through self-directed IRAs:

- Verify information in self-directed IRA statements;
- Avoid unsolicited investment offers;
- Ask questions;
- Be mindful of “guaranteed” returns; and
- Ask a professional before investing.⁶

(Continued on page 2)

¹OHIO REV. CODE ANN. § 1111.02; OHIO REV. CODE CHAPTER 1707.

²OHIO REV. CODE ANN. § 1111.05.

³Department of the Treasury, Internal Revenue Service, Contributions to Individual Retirement Arrangements (IRAs), Publication 590-A (2015), <https://www.irs.gov/>

<pub/irs-pdf/p590a.pdf>.

⁴NASAA, Self-Directed IRAs and the Risk of Fraud (Sept. 28, 2011), <http://www.nasaa.org/5866/self-directed-iras-and-the-risk-of-fraud/>.

⁵Id.

⁶Id.

(Continued from page 1)

Solicitors and issuers of fraudulent investment schemes may tout the tax advantages of investing through a self-directed IRA as an additional selling point to potential victims. Fraudsters who want to engage in Ponzi schemes or other fraudulent conduct may also exploit self-directed IRAs because they permit investors to hold unregistered securities, and the custodians or trustees of these accounts likely have not investigated the securities or the background of the issuer or solicitor. Because IRAs carry a financial penalty for premature withdrawal, self-directed IRA investors are induced to keep funds in fraudulent schemes for long periods of time, hindering timely discovery of this type of scam. Scammers may also overstate the due diligence or verification process that the trustee or custodian undertakes prior to establishing a self-directed IRA account in order to promote the appearance of legitimacy for their investment scam. Investors may be lulled by the appearance of legitimacy when the custodian or trustee issues periodic statements showing values and returns on investments in the self-directed IRA accounts.

Custodians and trustees should become familiar with requirements and prohibitions set forth in the Ohio Securities Act. If the custodian, trustee or their representatives are promoting certain investments or are engaged in activities that would fall within the definition of dealer, salesperson, investment adviser, or investment adviser representative, they must maintain proper licensure through the Division.⁷ Furthermore, the

prohibitions set forth in Ohio Revised Code Section 1707.44 apply to all persons engaged in the purchase or sale of securities. The Ohio Securities Act prohibits the publication or issuance of statements to investors or potential investors that contain false information about material facts,⁸ including false statements involving the value of any security.⁹

Recent criminal and civil cases have highlighted the risks of investing in unregistered securities through self-directed IRAs administered by third party custodians and trustees. A federal grand jury in the U.S. District Court in Dayton, Ohio returned an indictment filed on October 29, 2015 against William M. Apostelos and Connie M. Apostelos, a married couple operating various investment and asset management companies in the Dayton area.¹⁰ The indictment alleges that between 2009 and 2015 the defendants devised a scheme to defraud investors, in part, by indicating that third party trust companies maintained control over and safeguarded investors' funds from misappropriation. The indictment further alleges that the trust companies were merely utilized as pass-through entities through which the investor funds were delivered to the defendants.

On June 16, 2015, the SEC issued an [Order Instituting Cease-and-Desist Proceedings in File No. 3-16594](#) against Equity Trust Company; a trust company operating from a principal office located in Westlake, Ohio. The SEC alleged that Equity Trust Company was a custodian for at least two Ponzi-schemed investments, one promoted

(Continued on page 3)

⁷See OHIO REV. CODE ANN. § 1707.01.

⁸OHIO REV. CODE ANN. § 1707.44(G).

⁹OHIO REV. CODE ANN. §§ 1707.44(J), (K).

¹⁰U.S. v. Apostelos et al., 3:15CR-148 (S.D. Ohio).

CAPITAL FORMATION WORKING GROUP

The Division is currently considering alternative finance and other proposals to give small businesses greater access to capital in Ohio, but we need your help to find the right path.

Please help us move forward by joining the Division's

CAPITAL FORMATION WORKING GROUP

Contact the Working Group Chair

Mark Heurman

Mark.Heurman@com.ohio.gov

for information on how to join.

ELDER FINANCIAL ABUSE WORKING GROUP

Please help us respond to this crisis by joining the Division's

ELDER FINANCIAL ABUSE WORKING GROUP

Contact the Working Group Chair

Brian Peters

Brian.Peters@com.ohio.gov

for information on how to join.

Pitfalls and Precautions for Self-Directed IRAs

(Continued from page 2)

by Ephren Taylor through City Capital Corp. in North Carolina¹¹ and the other by Randy Poulson through Equity Capital Investments, LLC in New Jersey.¹² The SEC alleged that Equity Trust Company was a cause of Taylor's and Poulson's violations of Section 17(a)(2)¹³ and 17(a)(3)¹⁴ of the Securities Act. According to the [SEC's allegation](#), the violations require only a showing of negligence on the part of Equity Trust Company. In response to the allegations filed by the SEC, Equity Trust Company published a statement on their website stating the following, "Equity Trust denies the SEC's allegations and will vigorously defend itself. Equity Trust is an industry leader in fighting fraud, and stopped permitting its self-directed IRA clients to make investments with these sponsors more than two years before the SEC brought actions against them."¹⁵ An administrative hearing was held in December of 2015 in this case, which is pending a final ruling from the Administrative Law Judge.

In a criminal case referred for prosecution by the Indiana Division of Securities and prosecuted in Dearborn and Franklin Counties in Indiana and Hamilton County in Ohio, Jasen Snelling, formerly of Cincinnati, was convicted of multiple criminal counts including securities fraud, theft, wire fraud, and mail fraud in 2012 and 2013 for bilking investors out of more than \$4.5 million in a nearly decade-long Ponzi scheme.¹⁶ The scheme involved promises to investors, some elderly, in Ohio, Kentucky, and Indiana, that Snelling was a talented day trader and could earn up to 20 percent returns. Snelling, through various companies, encouraged investors to roll over their traditional IRAs into self-directed IRAs through a trust

company. Snelling immediately withdrew funds from those accounts for personal living expenses, but investors continued to receive statements from the trust company, as well as bills for custodial fees, even after their money was taken out of the accounts. Snelling was sentenced to more than 50 years in prison.

These recent cases involving fraudulent schemes perpetrated through the use of self-directed IRAs administered by IRA custodians and trustees highlight the risk of investing in unregistered securities through these types of accounts. Ohio investors and the securities industry should be cautious when relying on statements issued by IRA custodians representing the value of the securities. If fraud is suspected, investors should verify IRA account values through third party sources for the value of the underlying securities held in these types of accounts. Due diligence could include requesting audited financial statements for issuers of unregistered securities within the IRA portfolio, reviewing trading records and account statements issued by licensed securities dealers, if applicable, and seeking similar records created and issued by entities not directly involved in referring or creating the self-directed IRA account. If the underlying investment for the self-directed IRA includes real estate, the investor could request copies of deeds, title reports or appraisals for the collateralized real estate. For all investments, including investments initiated through self-directed IRA programs, the Division of Securities encourages potential investors to call the Division's Investor Protection Hotline prior to investing to determine whether the individuals and entities involved are properly licensed and whether the underlying security is registered for sale in Ohio.

¹¹U.S. v. Taylor, 1:14CR-217 (N.D. Ga.).

¹²U.S. v. Poulson, 1:14CR-309 (D. N.J.).

¹³15 U.S.C.A. § 77q (Lexis 2015).

¹⁴Id.

¹⁵Statement from Equity Trust Company (June, 16, 2015).

¹⁶State v. Snelling, 15D01-1106-FC-00055, Dearborn Cnty. Super. Ct. (Ind. 2011); State v. Snelling, 24CO2-1102-FB-000046, Franklin Cnty. Cir. Ct. (Ind. 2011); U.S. v. Snelling, 1:12CR-58 (S.D. Ohio).

SAVE THE DATE
Friday, October 21st, 2016

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and the

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COLLEGE OF LAW**

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THE PROCESS OF A COMPLAINT

By Ohio Division of Securities Attorney Inspector, Janice Hitzeman



The Ohio Division of Securities (the “Division”) receives complaints from a variety of sources, including direct complaints filed with the Division and internal and external referrals. The Division appreciates the opportunity to review all information received in order to determine whether such information justifies the initiation of an investigation. During the intake process, the Division may conduct a preliminary review of public information about the subject of the complaint that may be available on the internet. Examples of these sources would include any publicly-filed documents and records, in-state and federal securities licensing documents, and registration records. The Division reviews each complaint through a 4-person panel generally consisting of the Attorney Inspector, Deputy Attorney Inspector, Investigator and an Administrative Assistant. The panel reviews and discusses the information provided by the complainant, as well as any information gathered, in order to answer the following questions:

- Does the complaint involve a “security” as defined by R.C. 1707.01(B)?
- Is the subject of the complaint licensed in Ohio as a securities dealer, securities salesperson, investment adviser or investment adviser representative?
- Does the alleged activity involve a potential violation of the Ohio Securities Act?
- Did the alleged activity occur in Ohio? Are the alleged victims or the subject of the complaint located in Ohio?
- Did the alleged activity occur within the past 5 years?¹
- Is there another state or federal agency that regulates the individuals and activities alleged in the complaint?
- Does the Division have any open or closed cases involving the subject of the complaint?
- Is there sufficient documentation provided with the complaint to substantiate the allegations?

After the panel reviews the complaint and documentation,² the panel recommends one or more of the following actions:

- Request additional documentation from the complainant to substantiate the complaint;
- Obtain further information from third-party sources to substantiate the complaint;
- Refer the matter to another agency which had primary regulatory authority or primary criminal investigative authority over the alleged acts; and/or
- Assign the investigation to an enforcement attorney to continue a formal investigation.

Members of the public can file a complaint with the Division online at https://www.comapps.ohio.gov/secu/secu_apps/complaints/, which can be accessed through the Ohio Department of Commerce website at www.com.state.oh.us. Individuals who would like to speak with an enforcement attorney to file a complaint via telephone should contact the Division at 1-877-683-7841 (877-NVEST411). The Division of Securities encourages potential investors to call the Division before investing to ask:

- Is the brokerage firm and salesperson licensed to sell securities in Ohio?
- Have any enforcement actions been taken against them?
- Has the security been properly registered with the Division of Securities?



Before investing your money with anyone,

CALL 1-877-N-VEST-411

VISIT CONARTIST.OHIO.GOV



¹R.C. 1707.28 bars the Division from prosecuting or initiating action for a violation of the Ohio Securities Act if the action is not commenced within five years after the commission of the alleged violation.

²R.C. 1707.12(C) states, “Confidential law enforcement investigatory records and trial preparation records of the division of securities or any other law enforcement or administrative agency which are in the possession of the division of securities shall in no event be available to inspection by other than law enforcement agencies, state agencies, federal agencies, and other entities as set forth by rules adopted by the division.”